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ELECTRONIC DOCUMENTS

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Electronic data is modifying how lawyers interact, changing how information is collected and used, and transforming our courtrooms. This in-depth resource examines and analyzes the issues relating to electronic documents, including: the sources and types of electronic documents, records management policies, the legal framework governing e-discovery in Canada, the preservation, collection, processing, review and production of electronic documents, and the use of electronic evidence at trial. This dynamic and burgeoning aspect of legal practice is clarified and explained with extensive reference to relevant Canadian and U.S. authorities.

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What's New in this Update:

This year the releases will update Chapter 6 — Processing and Review of Electronic Documents. In this release, sections 6:35 onward have been updated. The chapter has been extensively updated to account for the updated Sedona Canada Principles: Addressing Electronic Discovery, Third Edition, 23 Sedona Conf. J. 161 (2022) (Sedona, Arizona: The Sedona Conference 2022). The chapter also includes updates to case law, legislation, and secondary sources such as articles and white papers.

Highlights

Chapter 6 — Processing and Review of Electronic Documents — Review of Electronic Documents for Relevance, Privilege, and Confidentiality- Choice of Review Format and Platform — Online Data Depository — Instead of reviewing documents in an in-house or local litigation support system, lawyers can opt for a web-based or “cloud”-based (online) review tool. Cloud-based data depositories are litigation support systems set up on a secure internet website that can typically be accessed through any internet browser. Electronic discovery service providers who offer cloud-based data depositories usually provide the full range of services, such as scanning, coding, processing, and loading the data into the depository, as well as ongoing training, support, and 24-hour customer service. Electronic Discovery Reference Model, “Review: Selecting a Vendor, Part 1”, available at <http://technology.findlaw.com/ediscovery-guide/review-selecting-a-vendor-part-1.html> (accessed December 13, 2022) [“Selecting a Vendor”]; Craig Ball, “Annotated ESI Protocol” (January 2023), available at: <http://craigball.com/ESIProtocol.pdf> (accessed February 13, 2023).

Chapter 6 — Processing and Review of Electronic Documents — Review of Electronic Documents for Relevance, Privilege, and Confidentiality — Review Protocols and Methodologies — Challenges to Document Review Process and Quality Control — There are risks in a document review process. Through the use of a technology-assisted review processes, which use automated relevancy assessments, some of these risks have been vastly reduced. Technology-assisted reviews employ automated relevancy assessments, and are intended to augment assessments that are made by human reviewers, or replace them on a defined range of issues. It has proven to be a highly effective and cost-efficient method, as compared to reviews done by humans. Naturally, the use of technology-assisted review processes still requires human oversight, and careful tailoring of the parameters of the data being identified. The Sedona Confer-

ence has published a detailed document that covers numerous issues relating to the use of technology-assisted review in the e-Discovery process. These include the history of judicial acceptance of technology-assisted review methods, as well as complex issues related to technology-assisted review methodologies, metrics, and validation. Although this document does not recommend best practices or comment on the utility of TAR, it aims to assist lawyers and courts to stay abreast of the evolving technology and related law. The Sedona Conference, TAR Case Law Primer, Second Edition, A Project of The Sedona Conference, Working Group on Electronic Document Retention & Production (WG1), February 2023 (Public Comment Version) available at <https://thesedonaconference.org/download-publication?fid=6701> (accessed March 10, 2023)

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